

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

MARK COLLINS,

Case No. 3:20-cv-00066-MMD-WGC

Petitioner,

ORDER

V.

ISIDRO BACA, *et al.*,

Respondents.

11 Petitioner Mark Collins has filed a *pro se* amended petition for writ of habeas
12 corpus (the “Petition”) under 28 U.S.C. § 2254. (ECF No. 3.) This habeas matter comes
13 before the Court for consideration of his Application to Proceed *In Forma Pauperis* (ECF
14 No. 1) and Motion for Appointment of Counsel (ECF No. 1-2), as well as initial review
15 under the Rules Governing Section 2254 Cases. For the reasons discussed below, the
16 Court dismisses the Petition for lack of jurisdiction and failure to state a cognizable habeas
17 claim.

18 Collins challenges his sentence related to a 2010 conviction in the Eighth Judicial
19 District Court for Clark County. *State of Nevada v. Collins*, Case No. 08C244013-1.¹ In
20 April 2010, Collins pleaded guilty to four counts of an amended indictment: (1) conspiracy
21 to commit robbery, (2-3) robbery, and (4) robbery with use of a deadly weapon. A
22 judgment of conviction was entered on September 2, 2010.

23 The Court takes judicial notice of the prior habeas petition Collins filed in the District
24 of Nevada challenging the same judgment: 3:16-cv-00433-MMD-VPC. The petition was
25 dismissed with prejudice as untimely, and the Court of Appeals for the Ninth Circuit denied
26 a certificate of appealability.

1 The current Petition is second or successive because a prior federal petition was
 2 decided on its merits, Collins attacks the same judgment of conviction, and the claims
 3 Collins raises here are based on facts that had occurred by the time of the prior petition.
 4 See *Brown v. Muniz*, 889 F.3d 661, 667 (9th Cir. 2018) (“[A] federal habeas petition is
 5 second or successive if the facts underlying the claim occurred by the time of the initial
 6 petition, . . . and if the petition challenges the same state court judgment as the initial
 7 petition.”). Under 28 U.S.C. § 2244(b)(3), before a second or successive petition is filed
 8 in the federal district court, a petitioner must move in the court of appeals for an order
 9 authorizing the district court to consider the petition. A federal district court does not have
 10 jurisdiction to entertain a successive petition absent such permission. *Brown*, 889 F.3d at
 11 667. Collins has made no allegation or showing that he has received authorization from
 12 the Ninth Circuit to file this second or successive petition, nor do the records of the Ninth
 13 Circuit reflect that he has sought to obtain any such authorization. This second or
 14 successive petition must therefore be dismissed for lack of jurisdiction.

15 Furthermore, Collins’ current Petition fails to allege a cognizable federal habeas
 16 claim. The Antiterrorism and Effective Death Penalty Act “places limitations on a federal
 17 court’s power to grant a state prisoner’s federal habeas petition.” *Hurles v. Ryan*, 752
 18 F.3d 768, 777 (9th Cir. 2014) (citing *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011)). A
 19 state prisoner is entitled to federal habeas relief only if he is being held in custody in
 20 violation of the constitution, laws, or treaties of the United States. 28 U.S.C. § 2254(a).
 21 “Thus, a habeas corpus petition must allege a deprivation of one or more federal rights to
 22 present a cognizable federal habeas corpus claim.” *Burkey v. Deeds*, 824 F. Supp. 190,
 23 192 (D. Nev. 1993).

24 Federal habeas relief is unavailable “for errors of state law.” *Lewis v. Jeffers*, 497
 25 U.S. 764, 780 (1990). A state’s interpretation of its own laws or rules provides no basis
 26 for federal habeas relief because no federal question arises. *Estelle v. McGuire*, 502 U.S.
 27 62, 67–68 (1991) (federal courts may not reexamine state court decisions on state law
 28 issues). A petitioner “may not transform a state-law issue into a federal one merely by

1 asserting a violation of due process.” *Langford v. Day*, 110 F.3d 1380, 1389 (9th Cir.
 2 1997). Generally, matters relating to state sentencing are not cognizable on federal
 3 habeas review. *Christian v. Rhode*, 41 F.3d 461, 469 (9th Cir. 1994) (state court’s
 4 misapplication of state sentencing laws does not violate due process thereby justifying
 5 federal habeas relief unless petitioner can show “fundamental unfairness”); *Miller v.*
 6 *Vasquez*, 868 F.2d 1116, 1118-19 (9th Cir. 1989) (question of whether a prior conviction
 7 qualifies for sentence enhancement under California law is not cognizable federal habeas
 8 claim).

9 In the Petition, Collins asserts two grounds for relief under the Fifth, Sixth, Eighth,
 10 and Fourteenth Amendments. (ECF No. 3.) Collins has completed his sentences for the
 11 three conspiracy and robbery counts and is currently serving an aggregated sentence for
 12 the fourth count: robbery with a deadly weapon enhancement pursuant to NRS § 193.165
 13 as amended in 2007. He claims the Nevada Department of Corrections has failed to apply
 14 good time credits to his minimum term of imprisonment. According to Collins, this action
 15 “raises the issue of statutory interpretation and how the interpretation is applied to his
 16 sentence [and] earned statutory credits.” (*Id.* at 6.)

17 Collins filed a state petition for writ of habeas corpus in 2018 seeking post-
 18 conviction relief in the First Judicial District Court for Carson City. (*Id.* at 35-42.) The First
 19 Judicial District Court denied the petition. (*Id.* at 5.) He appealed, but the Nevada Court
 20 of Appeals denied the appeal on state law grounds in October 2019.² Collins also filed a
 21 motion with the Eighth Judicial District Court in 2018 requesting a sentence modification
 22 based on the purported illegal sentence. (*Id.* at 44-66.) The state court denied the motion,
 23 and Collins appealed. (*Id.* at 73-74.) In December 2019, the Nevada Court of Appeals
 24 denied the appeal on state law grounds. (*Id.*)

25 Although Collins mentions “due process” and “cruel and unusual punishment” in
 26 the Petition, his claims present no federal question because they plainly involve the
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28 ²The Court takes judicial notice of the online docket records of the Nevada
 appellate courts, which may be accessed by the public online at:
<http://caseinfo.nvsupremecourt.us/public/caseSearch.do>.

1 application or interpretation of state sentencing law. See *Swarthout v. Cooke*, 562 U.S.
2 216, 220-22 (2011) (noting that the Supreme Court has “long recognized that a mere error
3 of state law is not a denial of due process”). Collins’s claims are questions of state law
4 and therefore are not cognizable in federal habeas corpus proceedings.³

5 It is therefore ordered that this action is dismissed without prejudice.

6 It is further ordered that Petitioner Mark Collins is denied a certificate of
7 appealability, as jurists of reason would not find the dismissal of the petition to be
8 debatable or wrong.

9 It is further ordered that Collins’ Application to Proceed *In Forma Pauperis* (ECF
10 No. 1) and Motion for Appointment of Counsel (ECF No. 1-2) are denied as moot.

11 It is further ordered that, pursuant to Rule 4 of the Rules Governing Section 2254
12 Cases, the Clerk will make informal electronic service upon Respondents by adding
13 Nevada Attorney General Aaron D. Ford as counsel for Respondents and by directing a
14 notice of electronic filing of this order to his office. No response is required from
15 Respondents other than to respond to any orders of a reviewing court.

16 It is further ordered that the Clerk of Court is further instructed to enter final
17 judgment accordingly, dismissing this action without prejudice, and close this case.

18 DATED THIS 12th day of May 2020.

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22 MIRANDA M. DU
23 CHIEF UNITED STATES DISTRICT JUDGE
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28 ³The Court notes that Collins claims also appear non-cognizable in federal habeas
because success on their merits “would not necessarily lead to immediate or speedier
release” given the discretionary nature of parole decisions. See *Nettles v. Grounds*, 830
F.3d 922, 934-35 (9th Cir. 2016).